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September 20, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

ORIGINAL

Re: Opposition to Petition for Reconsideration of the Commission's Order
Denying RadioShack's Petition for Waiver of Section 15.37(k)

Dear Ms. Dortch:

We are submitting an original and four copies (4) of the attached *Opposition to Petition for Reconsideration of the Commission's Order Denying RadioShack's Petition for Waiver of Section 15.37(k)* for filing in this undocketed proceeding. We have filed this document in ET Docket 01-278, RM-9375 and RM-10051 as well.

Please call me if you have any questions regarding this submission.

Respectfully submitted,



Elizabeth R. Park

Enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Review of Part 15 and Other Parts)
of the Commission's Rules)

ET Docket 01-278

RM-9375

RM-10051

Petition for Waiver of Section 15.37(k))
of the Commission's Rules)

File No.:

**OPPOSITION TO PETITION FOR RECONSIDERATION OF THE COMMISSION'S ORDER DENYING
RADIOSHACK'S PETITION FOR WAIVER OF SECTION 15.37(K)**

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September 20, 2002

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**OPPOSITION TO PETITION FOR RECONSIDERATION OF THE COMMISSION'S ORDER DENYING
RADIOSHACK'S PETITION FOR WAIVER OF SECTION 15.37(K)**

The Satellite Industry Association ("SIA") hereby opposes RadioShack's Petition for Reconsideration of the Commission's Order denying RadioShack's petition for waiver of Section 15.37(k).¹ In its *Petition for Reconsideration*, RadioShack argues that the Commission's denial of RadioShack's *Petition for Waiver*² will provide no public interest benefit but instead will only impose financial costs on RadioShack. RadioShack asserts that it will sell all of its non-Part-15-compliant radar detectors before October 27, 2002, the last date that such devices legally may be marketed in the United States,³ and implies that it will not heed the Commission's

¹ *Petition for Reconsideration of the Commission's Order Denying in Part RadioSchack's [sic] Petition for Waiver of Section 15.37(k)*, filed by RadioShack Corporation on September 10, 2002 ("Petition for Reconsideration").

² *Petition for Waiver on Behalf of RadioShack*, filed by RadioShack on August 13, 2002 ("Petition for Waiver"), *Addendum to Petition for Waiver*, filed by RadioShack on August 26, 2002.

³ *Review of Part 15 and Other Parts of the Commission's Rules*, ET Docket 01-2788, First Report and Order, FCC 02-211 (rel. July 19, 2002) ("First Report and Order"); *Review of Part 15 and Other Parts of the Commission's Rules*, ET Docket 01-278, Order, FCC 02-238 (rel. August 28, 2002) ("August Order").

request that retailers remove such devices from their shelves before that date.⁴ Thus, RadioShack argues this deadline is meaningless. For the reasons set forth below, it is critical that the Commission maintain the October 27 marketing deadline to stem the continued sale of non-Part-15-compliant radar detectors that conclusively have been shown to cause harmful interference into licensed satellite operations.

I. INTRODUCTION AND SUMMARY

Although RadioShack was provided with more than adequate notice regarding the Commission's proposal to regulate radar detectors,⁵ RadioShack chose not to participate in the Part 15 rulemaking proceeding. Only after the Commission released its *First Report and Order* did RadioShack file its *Petition for Waiver*, essentially seeking reconsideration of the Commission's rules. On August 27, 2002, the Commission denied RadioShack's request for a six-month waiver of the compliance deadline, and instead granted a limited 30-day waiver to all marketing of non-compliant radar detectors.⁶ On August 30, 2002, RadioShack filed its *Emergency Petition for Waiver* requesting a one-month waiver until November 30, 2002 to prevent the "irretrievable" losses that RadioShack would suffer while it sought reconsideration of the Commission's decision in the *August Order*.⁷ The Commission denied that request for relief as well.⁸ RadioShack now files this *Petition for Reconsideration* and renews its request for an extension, apparently until March 30, 2003.

⁴ *August Order* at ¶ 16.

⁵ *Notice of Proposed Rule Making and Order* in ET Docket No. 01-278, 16 FC Rcd 18205 ¶ 14 (2001).

⁶ *See August Order*.

⁷ *Emergency Petition for Waiver*, filed by RadioShack on August 30, 2002 at 1-2 ("*Emergency Petition for Waiver*")

⁸ *See* Letter from Chief, Office of Engineering and Technology to Counsel for RadioShack Corporation, DA 02-2144 (released September 3, 2002).

RadioShack's original arguments in its *Petition for Waiver* focused on assertions that (1) as a large, private-label retailer, RadioShack has a slow product distribution process that will cause it a disproportionate economic loss; (2) RadioShack's private-label radar detectors emit signals that are less harmful than other radar detectors; (3) some Commission precedent set forth a longer implementation schedule than in the Commission's *First Report and Order*; and (4) the quantity of non-compliant radar detectors entering the market would be fixed at an unspecified level. Without even participating in the Commission's rulemaking proceeding regarding the regulation of radar detectors, RadioShack raised these untimely and meritless arguments.

In its *August Order* denying RadioShack's request for an unlimited waiver of the marketing deadline in Section 15.37(k),⁹ the Commission specifically refuted RadioShack's argument that its radar detectors are less likely to cause interference by finding that the "levels measured by RadioShack are 25 to 71 times greater than the emission limit [the Commission] found is necessary to prevent harmful interference to VSATs."¹⁰ The Commission also extensively explained the distinctions between the cases cited by RadioShack, in which the Commission adopted longer compliance schedules for new rules than the deadlines adopted in the *August Order* and in the *First Report and Order*.¹¹ Specifically, the Commission cited the unprecedented harmful levels of emissions from non-compliant radar detectors and the severe harm caused by these emissions to satellite services in the 11.7-12.2 GHz band. The Commission also pointed to the shortage of qualified testing laboratories that existed at the time

⁹ See *August Order*.

¹⁰ *August Order* at ¶ 17.

¹¹ *Id.* at ¶ 8. RadioShack cited the same cases that the FCC addressed in the context of denying RADAR's *Motion for Stay*, filed in ET Docket 01-278 on July 26, 2002.

of the other proceedings cited by RadioShack, in contrast with the current situation where qualified laboratories are ready, willing and able to test radar detectors.

While the Commission did not dissect RadioShack's explanation about the problems with RadioShack's distribution process or RadioShack's assertions regarding the extent of the financial harm it claims it will suffer in holding a "fire sale" of non-compliant devices, the Commission reasonably considered these assertions along with all of the other information in the record when it decided to grant only a limited 30-day waiver of the marketing cutoff date.¹² The Commission intended this limited waiver, granted in conjunction with a request that retailers voluntarily remove non-compliant radar detectors from their inventory as quickly as possible,¹³ to reduce the number of non-Part-15-compliant radar detectors sold in the United States. Nonetheless, with its arguments in the *Petition for Waiver* summarily rejected, RadioShack resorts to repackaging the same arguments, and petitions the Commission to reconsider the same facts that the Commission had before it in the *Petition for Waiver* and in the *Emergency Petition for Waiver*, and requests for the third time that the Commission waive the upcoming October 27, 2002 marketing deadline.

SIA urges the Commission to deny RadioShack's *Petition for Reconsideration* because the Commission, in granting a limited waiver, already weighed (i) RadioShack's asserted costs of complying with the radar detector rules and RadioShack's declaration that it will attempt to sell all of its non-complying radar detectors, against (ii) the demonstrated harm to the public from allowing the continued sale of non-compliant radar detectors.¹⁴ RadioShack

¹² *August Order* at ¶ 16.

¹³ *Id.*

¹⁴ *See Opposition to Petition for Waiver on Behalf of RadioShack*, filed by SIA on August 26, 2002 at 14-18 ("*Opposition to Petition for Waiver*").

does not present any new facts that warrant grant of its *Petition for Reconsideration*. Further, SIA has shown on the record that there are no special circumstances that warrant RadioShack being treated differently than anyone else who is subject to the October 27 deadline. Thus, the Commission should deny this renewed request for a waiver.

II. RADIOSHACK'S FILING DOES NOT MEET THE STANDARD FOR A PETITION FOR RECONSIDERATION

RadioShack's *Petition for Reconsideration* does not meet the criteria for a grant of such a petition established in the Commission's Rules and in Commission decisions.

As an initial matter, SIA believes that Section 1.106 of the Commission's Rules governs reconsideration of the Commission's decision on RadioShack's *Petition for Waiver* because the Commission was acting on a waiver request by a specific party, and the action on RadioShack's waiver request, although included in the *August Order* in ET Docket 01-278, did not change any rules.¹⁵ Commission rules specifically contemplate that rulemaking documents may also contain adjudicatory decisions with respect to specific parties, and rulemaking proceedings and adjudicatory decisions are subject to different procedural rules at the Commission.¹⁶

As the Commission stated in another Section 1.106 case: "It is settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected."¹⁷ The Commission has already rejected RadioShack's *Emergency Petition for Waiver* pursuant to Section 1.106(b) based on the finding

¹⁵ See, e.g., *Bell Mountain Communications, Inc. Request for Waiver of Upfront Payment Deadline in Auction No. 30*, 16 FCC Rcd 4893, n. 12.

¹⁶ See, e.g., 47 C.F.R. § 1.4(b)(1) & note thereto.

¹⁷ *Communications and Control, Inc. Request for Extension of Special Temporary Authority and Modification of Authorization of 220 MHz System WPCX448*, 17 FCC Rcd 9359 at ¶ 7 (2002).

that RadioShack made effectively the same arguments in its *Petition for Waiver*.¹⁸ As explained below, RadioShack again makes the same arguments in this *Petition for Reconsideration*; therefore, the Commission should dismiss this further request for waiver on the same basis.

Despite RadioShack's assertion that its waiver request was not filed in the Commission's rulemaking in ET Docket No. 01-278,¹⁹ RadioShack has expressly filed its *Petition for Reconsideration* pursuant to Section 1.429,²⁰ which governs petitions for reconsideration in notice and comment rulemaking proceedings. RadioShack fails to meet the requirements of that rule as well.

Under that standard, the facts and events known to the parties during a proceeding cannot be raised later as the grounds for reconsideration.²¹ As an initial matter, RadioShack did not participate in the rulemaking proceeding despite the fact that it had more than adequate notice and ample opportunity to submit information into the record regarding its distribution and retail cycles.²²

RadioShack recycles the facts and arguments in its *Petition for Waiver* in an attempt to obtain a third bite at the proverbial apple. Therefore, its *Petition for Reconsideration* should be dismissed as repetitious under Section 1.429 as well. For instance, in its *Petition for Reconsideration*, RadioShack presents details on where its costs of compliance arise – printing of

¹⁸ See Letter from Chief, Office of Engineering and Technology to Counsel for RadioShack Corporation, DA 02-2144 (released September 3, 2002).

¹⁹ *Petition for Reconsideration* at 2-3.

²⁰ *Petition for Reconsideration* at 1; see also, 47 C.F.R. § 1.429.

²¹ 47 C.F.R. § 1.429(b); see e.g., *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Third Order on Reconsideration of the Report and Order and Memorandum Opinion and Order, FCC 02-130 at ¶¶ 18-20 (rel. May 8, 2002); *Implementation of the AM Expanded Band Allotment Plan, Memorandum Opinion and Order*, 13 FCC Rcd 21972 at ¶ 7 (1998).

²² See *Opposition to Petition for Waiver* at 7-8.

flyers, implementing sales strategies to clear out inventory. However, these are not new facts or events—they were presented in the *Petition for Waiver* (as amended on August 26, 2002).

RadioShack again indicates that it anticipates losses of several million dollars, just as it did in its *Petition for Waiver*.²³

As it did in its *Petition for Waiver*, RadioShack again urges the Commission to grant RadioShack additional time to sell any remaining inventory, so that it can mitigate its losses. Earlier in this proceeding, SIA requested that the Commission take immediate action on the continued sale of non-compliant radar detectors because the longer retailers are permitted to sell these devices, the greater the number of non-compliant devices placed into service.²⁴ No new arguments are raised here.

The Commission has already weighed RadioShack's assertions against the harm suffered by SIA and other satellite operators from radar detector interference. RadioShack's losses, which it indicates that it has incurred since September 3, 2002, were fully described, twice before, in RadioShack's *Petition for Waiver* and in its *Emergency Petition for Waiver*.²⁵ In short, RadioShack has not put forth any new information into the record that adds to the weight of its cost burden and thus, there is no basis for the Commission to reconsider its decision in the *August Order*. RadioShack has merely repackaged the same arguments in a vain attempt to avoid compliance with the impending October 27 deadline.

²³ *Petition for Waiver* at 7-8.

²⁴ *Ex Parte* submission filed in ET Docket 01-278 by SIA on May 31, 2002 at 2; *see also*, *Opposition to Petition for Waiver* at 5.

²⁵ *Petition for Waiver* at 7-8; *Emergency Petition for Waiver* at 2-3.

III. IMPOSING A DEADLINE FOR COMPLIANCE IS A RATIONAL DECISION

RadioShack speculates that it will be successful in selling 100% of its non-compliant radar detectors before the October 27, 2002 deadline (or any deadline to which it may be subject) and, therefore, argues that grant of its request to extend the deadline could not possibly result in any additional harm to the satellite industry or the users of satellite services. In neither its *First Report and Order* nor its *August Order* did the Commission mandate that the marketing of non-compliant radar detectors cease immediately, as SIA requested earlier in this proceeding. Instead, the Commission imposed a fixed deadline and later granted retailers a limited waiver to ease the burden of compliance. Additionally, the Commission “encouraged [retailers] to remove non-compliant radar detectors from their inventory as quickly as possible.”²⁶ This two-pronged approach logically should lead to a decrease in the number of radar detectors that are capable of creating interference in the 11.7-12.2 GHz band.

RadioShack’s repeated emphasis of its intent to dump its inventory of non-compliant radar detectors does not prove that adopting a firm deadline is an ineffective or illogical way for the Commission to seek to reduce the number of interfering devices sold. Rather, RadioShack has demonstrated only that it refuses to cooperate with the Commission’s efforts to reduce harmful interference from non-compliant radar detectors. If the Commission accepts RadioShack’s flawed reasoning, the Commission could never implement *any deadline* that applies to goods already manufactured, and the Commission would be at the mercy of any retailer who decides to dump its inventory in a fire sale.

RadioShack’s logic is further rebutted by the facts of this case. RadioShack admits that in preparing to comply with the marketing deadline, RadioShack “reduced its

²⁶ *August Order* at ¶ 16.

inventory by refusing to accept delivery of 28,000 radar detectors still in Asia that it had ordered and were manufactured prior to the publication of the Commission's rule on July 29, 2002."²⁷ If the FCC had not adopted any cutoff date for compliance, RadioShack certainly would not have had any motivation for refusing to accept delivery of these 28,000 devices. Thus, as illustrated by RadioShack's actions, a compliance deadline certainly reduces the potential number of non-compliant radar detectors to be sold, and thereby reduces the overall potential for interference in the 11.7-12.2 GHz band.

Further, RadioShack's assertion that it began to incur irretrievable losses as of September 3, 2002 because it has already set clearance pricing for October contradicts RadioShack's claim that a grant of its *Petition for Reconsideration* would mitigate RadioShack's losses. RadioShack represents that its losses for its October sales are irretrievable since it has already irrevocably committed to a reduced sale price that it claims will deplete non-compliant inventory.²⁸ As a practical matter, therefore, the relief that RadioShack requests will have no effect on RadioShack's losses and its *Petition for Reconsideration* is effectively moot. On the other hand, if these facts are not as RadioShack claims and it is possible that RadioShack will have unsold inventory as of October 27, 2002, then the Commission would have further proof that the October 27 deadline actually would keep non-compliant radar detectors off the market.²⁹ Moreover, there is an alternative to selling units in a "fire sale" that would also honor the Commission's urging that RadioShack removed non-compliant units from its shelves before October 27. As SIA suggested in its *Opposition to the Petition for Waiver*, RadioShack could

²⁷ *Petition for Reconsideration* at 4.

²⁸ *Id.* at 6.

²⁹ RadioShack even acknowledges the possibility that it will not sell of the its non-compliant radar detectors by the end of October at the reduced price. See *Petition for Reconsideration* at 6.

repackage and sell non-compliant radar detectors overseas. This possibility further supports the Commission's conclusion that a fixed deadline could stem the sale of non-compliant radar detectors in the United States.

RadioShack again has ignored precedent that squarely supports the Commission's decision in this case. As SIA previously explained,³⁰ just this May, the Commission adopted a Report and Order imposing new emission limits on handheld and other mobile earth terminals ("METs") used by consumers of Mobile Satellite Service ("MSS"), including a compliance deadline similar to the marketing deadline set in this case.³¹ The emission limits were imposed to prevent the continued deployment of METs that the Commission feared could generate harmful interference. The Commission decided that METs brought into service commencing within 68 days after the adoption of the Order (on or after July 21, 2002) would have to comply with new technical limits. Thus, there was a two month window in which non-compliant METs could be sold. The Commission could have allowed the sale, in perpetuity, of any METs manufactured before the adoption of the rules, but it did not do so. Consistent with this precedent, the Commission is justified here in imposing a deadline for compliance that applies to RadioShack, as well as all other retailers, due to the evidence of harmful interference cited by SIA members and other satellite operators in the 11.7-12.2 GHz band. Indeed, the purpose of having any deadline for compliance is to fix the time for complying with the rules, whether or not all non-compliant devices have been sold.

³⁰ *Opposition to Petition for Waiver* at 23.

³¹ *In re Amendment of Parts 2 and 25 to implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements and Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emission Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band*, FCC 02-134, Report and Order and Further Notice of Proposed Rulemaking, 17 FCC Rcd 8903 (2002) ("MSS Emissions Limit Order").

IV. THE OCTOBER 27 MARKETING DEADLINE WAS REASONABLE GIVEN THE INFORMATION BEFORE THE COMMISSION

RadioShack argues that the Commission did not adequately consider the arguments RadioShack raised in its *Petition for Waiver*. Based on the information presented by both RadioShack and SIA, however, the Commission had a reasonable basis for determining that RadioShack did not meet the standard for a waiver of the implementation deadline. In SIA's *Opposition to Petition for Waiver*, attached hereto as Attachment A and incorporated herein by reference, SIA thoroughly rebutted each of RadioShack's arguments regarding its allegedly "unique" hardships of complying with the new rules and SIA demonstrated the need to maintain a short-term compliance date in order to protect the public interest.³²

A. RadioShack's Circumstances Are Not "Unique"

RadioShack simply failed to demonstrate any special circumstances that warranted granting it a waiver of the compliance deadline. SIA demonstrated that RadioShack's situation is not unique because every retailer has some idiosyncrasies in its business practices that impose a cost of compliance.³³ The Commission acknowledged in the *First Report and Order* and in the *August Order* that there are logistical issues and costs arising from compliance with the new rules.³⁴ SIA showed that the majority of RadioShack's asserted special circumstances are attributable to shipping delays – circumstances that every retailer must deal with.³⁵ SIA also showed that by continuing to enter contracts to purchase non-compliant radar detectors during the course of this proceeding, RadioShack assumed the risk of a change in the

³² See *Opposition to Petition for Waiver*, attached as Attachment A.

³³ See *Opposition to Petition for Waiver* at 9-13.

³⁴ *First Report and Order* at ¶ 17; *August Order* at ¶ 18.

³⁵ *Opposition to Petition for Waiver* at 9.

Commission's regulations in a proceeding in which RadioShack chose not to participate..³⁶

Further, SIA showed that granting RadioShack's requested relief would open the floodgates to requests for relief from other retailers and manufacturers who could also complain about the burdens of complying with the new rules.³⁷

Additionally, SIA noted that RadioShack's status as the only private-label retailer of radar detectors in the United States is solely as a result of its desire to sell radar detectors with its own label.³⁸ RadioShack actually sells many other types of brand-name products,³⁹ and RadioShack has not even attempted to explain why it could not purchase the large numbers of compliant radar detectors that RADAR has represented its members are now manufacturing. Doing so would allow RadioShack to stock its stores, meet the needs of its customers and provide a way for RadioShack employees to earn the sales commissions that it claimed will be lost as a result of meeting the compliance deadline.

Based on these arguments, the Commission reasonably could have concluded that it could not successfully grant RadioShack a waiver from the compliance deadline without opening the floodgates to similar challenges by other retailers, who like RadioShack, failed to participate in the proceeding on a timely basis. Instead of attempting to comply with the Commission's rules, RadioShack insists that its "unique" circumstances have driven it to conduct a massive fire sale of non-compliant radar detectors. To the contrary, RadioShack's circumstances are unique only with respect to its refusal to voluntarily remove non-compliant

³⁶ *See id.* at 10.

³⁷ *See id.* at 18.

³⁸ *See id.* at 11.

³⁹ *See id.* at 11-12.

radar detectors from its inventory, as the Commission requests of retailers in its *August Order*,⁴⁰ and its resistance against observing the compliance deadline. The International Mass Retail Association (“IMRA”) confirmed SIA’s previous assertion that “the idea of having retailers remove the non-compliant detectors from their shelves seems reasonable” and IMRA also indicated that its members “may be receptive to this concept.”⁴¹ There is no reason RadioShack could not have done the same.

B. Minimizing RadioShack’s Losses Through A “Fire Sale”

RadioShack insists that if it is forced to comply on a short timeframe, the only feasible method to minimizing its losses is to sell its non-compliant radar detectors through a fire sale. However, RadioShack still has not addressed SIA’s arguments, which suggested that RadioShack has other methods of minimizing its losses of complying with the rules.⁴² RadioShack insisted that it has no choice but to sell its remaining non-compliant inventory through a fire sale because it cannot get a refund from its manufacturers and because it will not compromise its brand name by “dumping” its inventory abroad.⁴³ RadioShack does not even attempt to square the claim that it cannot get a refund with the fact it successfully refused delivery of 28,000 devices it previously reported were part of its inventory.⁴⁴ Nor has RadioShack responded to SIA’s argument that, notwithstanding company policy, it seems

⁴⁰ *August Order* at ¶ 16.

⁴¹ *Ex Parte* Notice filed in ET Docket 01-278 by International Mass Retail Association on August 22, 2002.

⁴² *Opposition to Petition for Waiver* at 11-13.

⁴³ *Petition for Waiver* at 7-8.

⁴⁴ *See Petition for Reconsideration* at 4; *Petition for Waiver* at 7.

commercially feasible for RadioShack to sell its non-compliant radar detectors overseas, or to have them repackaged and sold overseas under its foreign brand, Tandy, or another name.⁴⁵

In short, based on all of this evidence, the Commission reasonably could have come to the conclusion that RadioShack does not deserve special treatment for its business decision to expedite the sale of its non-compliant inventory of radar detectors by drastically cutting prices. Additionally, the Commission would have been entirely justified in declining to provide special relief to a retailer that did not participate in the rulemaking process but assumed the business risk of purchasing non-compliant radar detectors during the pendency of the proceeding.

C. SIA Argued For An Immediate Cessation Of The Sale Of Non-Compliant Radar Detectors

During the course of the rulemaking proceeding, SIA and other satellite operators requested that the Commission grant immediate relief from radar detector interference by making its rules effective immediately⁴⁶ and by instituting a recall of all non-compliant radar detectors already sold or on the market.⁴⁷ To support this request, the SIA and other satellite operators introduced into the record extensive evidence of the debilitating harm that radar detector emissions in the 11.7-12.2 GHz band inflict on satellite operations.⁴⁸ On the other hand, RadioShack and other radar detector retailers abstained from commenting during the proceeding. Instead, RadioShack raised timing issues with respect to its six-month distribution process for the first time in its *Petition for Waiver*.

⁴⁵ See *Opposition to Petition for Waiver* at 13.

⁴⁶ *Ex Parte* submission filed in ET Docket 01-278 by SIA on May 31, 2002 at 2.

⁴⁷ Starband/Spacenet Comments filed in ET Docket 01-278 on February 12, 2002; SIA Reply Comments filed in ET Docket 01-278 on March 12, 2002 at 6.

⁴⁸ See *id.*

In response to RadioShack's request for a waiver, SIA emphasized that the Commission should maintain the marketing deadline established in its *First Report and Order* because granting the requested waiver would have long-term effects and would facilitate the disruption of satellite services for many years to come.⁴⁹ As the Commission recognized in the *First Report and Order*, once the radar detectors are in the hands of consumers, there is no effective way to enforce the non-interference provisions of Part 15.⁵⁰ Given the extremely high emission levels of radar detectors in the 11.7-12.2 GHz band and the demonstrated and uncontroverted interference problem, SIA urged the Commission to maintain the September 27, 2002 compliance deadline for marketing of non-compliant radar detectors.⁵¹

RadioShack mistakenly presumes that the Commission did not consider its arguments simply because the Commission denied its request for a waiver. On the contrary, the Commission had before it numerous arguments and a wealth of facts and data, which the Commission thoughtfully balanced in deciding to grant retailers only a limited 30-day extension of the marketing deadline. RadioShack's contention that the only logical result of its *Petition for Waiver* was to grant an unlimited waiver is completely baseless. Therefore, SIA urges the Commission to deny RadioShack's *Petition for Reconsideration*.

⁴⁹ *Opposition to Petition for Waiver* at 7-8.

⁵⁰ 47 C.F.R. § 15.5; *First Report and Order* at ¶ 11.

⁵¹ *Opposition to Petition for Waiver* at 17. RadioShack accuses SIA of contradicting itself by requesting that the Commission stem the tide of non-compliant radar detectors and also noting that RadioShack has begun its fire sale of non-compliant radar detectors. See *Petition for Waiver* at 5, n.12. RadioShack's claim is nonsensical and misconstrues SIA's reference to the fire sale. SIA referred to RadioShack's fire sale to highlight the fact that RadioShack was conducting a fire sale even before the Commission acted on its waiver request and that the threat of a fire sale therefore did not provide a basis for a waiver.

V. CONCLUSION

The Commission should dismiss or deny RadioShack's *Petition for Reconsideration* and thereby affirm the application to all retailers and other marketers of the prohibition on marketing of non-compliant radar detectors after October 27, 2002. Fixing the deadline for marketing compliance will limit the harmful non-compliant radar detectors into satellite communications in the 11.7-12.2 GHz band. RadioShack fails to present any new facts or arguments that warrant a grant of the *Petition for Reconsideration*. Further, the Commission had a more than adequate basis in the record to support the Commission's decision.

Respectfully submitted,

SATELLITE INDUSTRY ASSOCIATION

By: /s/ Richard DalBello

Richard DalBello

President

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CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of September, 2002, caused a true copy of the foregoing "Opposition to Petition For Reconsideration of The Commission's Order Denying RadioShack's Petition For Waiver of Section 15.37(k)" to be deposited in the United States Mail, first-class, postage-paid, addressed to the following:

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